IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRL.A.No. 1458 of 2003()

CC.377/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

.....

APPELLANT: COMPLAINANT

DEVI DHAMODHARAN, W/O. DHAMODHARAN,
ABHILASH VEETTIL, VATEKKAD HOUSE, P.O.AMALA NAGAR,
PUZHAKKAL VILLAGE, THRISSUR DISTRICT, REPRESENTED
BY VINCENT PAUL S/O. PAUL, PALLISSERY HOUSE,
AMMADAM DESAM, PARALAM VILLAGE, THE POWER OF
ATTORNEY HOLDER.

BY ADV. SRIP.G.SURESH

RESPONDENTS: ACCUSED

---

1. M.UNNIKRISHNAN NAIR
S/O. LATE MADHAVAN NAIR, NERINGOTTU HOUSE,
P.O.PAVARTY, THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1458 of 2003

Dated this the 31st day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.377/2000 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. As pointed out by the counsel for the appellant the court below acquitted the accused only on the ground that the statutory formalities envisaged under Section 138(b) of the N.I. Act has been violated. The court below found that the lawyer notice demanding the amount was sent beyond the then time limit fixed i.e., within 15 days of receipt of intimation. It is pointed out that the relevant records produced by the complainant were not marked. i.e., the intimation received from the bank which would show the date when the cheque was presented and the postal cover which would show that the date of receipt of intimation of dishonour by the complainant. It is seen from the cross examination of PW1 that no such contention has also been raised by the accused.

3. I find that the evidence adduced in the matter consisted of the solitary testimony of PW1 and Exts. P1 to P6.

4. I find that in the cross examination of PW1, no specific contention has been raised by the accused with respect to the transaction alleged. In the circumstances, I find that there is only one sided evidence with respect to the transaction and hence, I find no reason to deviate from the findings of the court below with respect to the fact that the impugned cheque was issued towards discharge of liability and that the execution stands proved. In the circumstances and in view of the fact that the court below acquitted the accused on the basis of a ground which has not even been raised by the accused and that the relevant records are seen produced by the complainant and the date of receipt of cover containing intimation of dishonour i.e., 22.5.2000 shows that the notice was sent within the time then stipulated under Section 138(b). In the circumstances, the finding of the court below is set aside.

5. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a

compensation of Rs.50,000/- to the complainant and in default, to undergo simple imprisonment for three months. The accused/respondent is granted six months' time to remit the compensation amount. He shall appear before the Judicial First Class Magistrate Court on 2.5.2008 to receive sentence.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl